No. 83-1040

In the Supreme Court of the United States

OCTOBER TERM, 1983

SEABOARD SYSTEM RAILROAD, INC., ET AL., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the administrative and judicial review procedures established by the Black Lung Benefits Act of 1972, 30 U.S.C. (& Supp. V) 901 *et seq.*, are exclusive, and thus preclude a district court from assuming jurisdiction over a challenge to a Department of Labor internal agency guideline as to the Act's coverage of particular employees.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—Continued:

Statutes and regulation:

Page

Statutes and regulation—Continued:

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-12a) is reported at 713 F.2d 1243. The opinion of the district court (Pet. App. 14a-19a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 1983. A petition for rehearing was denied on September 28, 1983 (Pet. App. 13a). The petition for a writ of certiorari was filed on December 23, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Black Lung Benefits Act of 1972 (BLBA), 30 U.S.C. (& Supp. V) 901 *et seq.*, provides benefits to miners who are totally disabled by pneumoconiosis (black lung disease) and to the survivors of miners whose deaths were

due to the disease or who were totally disabled by the disease at the time of their deaths. 30 U.S.C. (& Supp. V) 901, 921, 931. The Act establishes administrative and judicial procedures for review of black lung benefit eligibility determinations (30 U.S.C. (Supp. V) 932(a), incorporating 33 U.S.C. (& Supp. V) 919, 921) and authorizes the Secretary of Labor to promulgate such regulations as he deems necessary in administering the black lung benefit program. 30 U.S.C. (Supp. V) 932(a).

Under the Secretary's regulations applicable to claims filed after July 1, 1973, a deputy commissioner makes an informal determination regarding eligibility for benefits; any party dissatisfied with that determination may receive a formal hearing before an administrative law judge. 20 C.F.R. 725.410 *et seq.* Any party in interest may appeal the administrative law judge's decision to the Benefits Review Board, which is authorized to decide "substantial question[s] of law or fact"; any person adversely affected by a final order of the Benefits Review Board may obtain review in the court of appeals for the circuit in which the injury occurred. 33 U.S.C. 921(b)(1), (3) and (c).

Pursuant to his general administrative authority, the Secretary has also issued internal agency guidelines for determining, among other things, coverage under the BLBA. The internal guideline challenged by petitioners concerns the applicability of the BLBA to those who transport coal in or around a coal mine, and provides that "those [persons] engaged in transport functions between the extraction site and the tipple would be covered where their work is integral or necessary to the preparation or extraction process" (Pet. App. 32a).

2. Petitioners are 15 railroads that transport coal in interstate commerce (Pet. App. 2a, 14a). They brought suit against the Secretary of Labor, the Secretary of the Treasury and the Secretary of Health and Human Services, Trustees of the Black Lung Disability Trust Fund (see 26 U.S.C.

9501(a)), in the United States District Court for the Western District of Kentucky,[1] seeking a declaratory judgment that, as a matter of law, railroads are not "operators" and railroad employees are not "miners" as those terms are defined by the BLBA (Pet. App. 3a, 14a).[2] Petitioners also sought an injunction preventing the Secretary of Labor from implementing the internal agency guideline for determining benefit eligibility because the guideline does not expressly exclude railroad employees from the BLBA's coverage.

The district court granted petitioners' motion for summary judgment (Pet. App. 14a-19a, 20a-22a). The court held that Congress did not intend to include either railroads or railroad employees within the BLBA's scope (*id.* at 16a-18a). In so holding, the court rejected respondents' argument that it was precluded from exercising jurisdiction over petitioners' claims because petitioners are required to utilize the BLBA's exclusive administrative and judicial review procedures set forth at 33 U.S.C. (& Supp. V) 919, 921 (Pet. App. 15a). The court found the BLBA's review provisions inapplicable, concluding that "this controversy presents purely legal issues involving the construction of a statute, and the pendency of over 700 claims for Black Lung benefits [by railroad employees] makes these issues fit for judicial decision" (Pet. App. 15a).

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[1]Petitioners claimed jurisdiction under 28 U.S.C. (& Supp. V) 1331, 1337, 1361 and 2201.

[2]An "operator" is "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." 30 U.S.C. (Supp. V) 802(d). A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment." 30 U.S.C. (Supp. V) 902(d).

3. The court of appeals vacated the district court's judgment for lack of subject matter jurisdiction (Pet. App. 2a-12a). Relying on *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411 (1965), and *Compensation Department of District Five* v. *Marshall*, 667 F.2d 336 (3d Cir. 1981), the court of appeals held that the district court could not exercise jurisdiction here because Congress has specifically designated the court of appeals as the forum for judicial review of agency action under the BLBA, and "the BLBA statutory scheme of review is exclusive" (Pet. App. 8a). In reaching this conclusion, the court noted the comprehensive nature of the statutory review procedure: the Benefits Review Board may determine questions of both law and fact and a party dissatisfied with a decision of the Board may obtain review in the appropriate court of appeals (*ibid.*). Moreover, the court recognized that the BLBA expressly invests the district courts with jurisdiction "only in two very narrow situations involving enforcement of compensation orders" (*ibid.*). Finally, the court found the statutory review procedure adequate to address and resolve petitioners' claims, and it rejected the argument that "exceptional circumstances" necessitated that the district court assert jurisdiction in this case (*id.* at 7a-12a).[3]

ARGUMENT

The court of appeals correctly applied well-settled principles regarding the exclusivity of statutory review procedures to the review provisions of the BLBA. The decision

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[3]Because the court of appeals found that the district court lacked jurisdiction, it did not rule on the substantive issues raised by petitioners. The court did, however, state that the statutory definition of operator "does not clearly exclude railroads" and that the legislative history of the BLBA indicates that "Congress expressly recognized that a person working in transportation in or around a coal mine might be exposed to coal dust as a result of such employment and should not be deprived of BLBA benefits merely because his employer is not an 'operator' in the traditional sense" (Pet. App. 9a, 12a).

below does not conflict with any decision of this Court or of another court of appeals. In fact, the decision is wholly in accord with the decision of the only other court of appeals that has addressed the question. *Compensation Department of District Five* v. *Marshall*, 667 F.2d 336 (3d Cir. 1981).

In *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 379 U.S. 411 (1965), this Court held that an order issued by the Federal Reserve Board after an administrative adjudication under the Bank Holding Company Act was reviewable only in the court of appeals pursuant to the direct review provisions of that statute. Accordingly, the Court concluded that the district court lacked jurisdiction to enjoin the Comptroller of the Currency from issuing a certificate of authority for the new bank. The Court pointed to a number of factors that supported the conclusion that Congress had intended the statutory review provisions to be exclusive. First, Congress had specifically rejected a proposal that would have permitted the type of review sought by the complaining parties. 379 U.S. at 420. Moreover, the Court stated that, like other statutory review procedures that the Court had found to be exclusive, the statutory review procedure at issue was "designed to permit agency expertise to be brought to bear on particular problems." *Ibid.* The Court observed that, where Congress has "enacted a specific statutory scheme for obtaining review, * * * the doctrine of exhaustion of administrative remedies comes into play and requires that the statutory mode of review be adhered to notwithstanding the absence of an express statutory command of exclusiveness." *Id.* at 422. Finally, the Court concluded that allowing deviations from the statutory scheme "would result in unnecessary duplication and conflicting litigation." *Ibid.* The decision in *Whitney* was in accord with prior decisions of this Court. See, *e.g.*, *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U.S. 752 (1947);

Macauley v. *Waterman Steamship Corp.*, 327 U.S. 540 (1946); *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938).

The court of appeals' decision in this case is completely in accord with the principles developed in *Whitney*, and with the Third Circuit's decision in *Compensation Department*.[4] In the latter case, the court applied the factors identified by this Court in *Whitney* in holding that the BLBA "scheme of review * * * was intended to be exclusive." 667 F.2d at 340. The court therefore concluded that a district court could not assert jurisdiction over a claim that the Secretary of Labor's practice of rereading x-rays of black lung claimants should be enjoined because it exceeded the Secretary's statutory authority.

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[4]Petitioners erroneously assert (Pet. 12-13) that the decision below conflicts with *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), rev'g 385 F. Supp. 424 (E.D. Ky. 1974), and *NICOA* v. *Usery*, 419 U.S. 955 (1975), aff'g 372 F.Supp. 16 (D. D.C. 1974), in which this Court reviewed district court decisions adjudicating constitutional challenges to the BLBA and to regulations promulgated thereunder. In neither *Turner Elkhorn* nor *NICOA* was the issue of the exclusivity of the BLBA's review procedure raised by the parties or addressed by the Court. Accordingly, there is no merit to petitioners' claim that these cases resolved the jurisdictional issue in petitioners' favor. See *Pennhurst State School & Hospital* v. *Halderman*, No. 81-2101 (Jan. 23, 1984), slip op. 28. Moreover, we note that *Turner Elkhorn* involved the Secretary of Labor's appeal to this Court from a district court judgment holding certain provisions of the BLBA unconstitutional. In those circumstances, this Court had jurisdiction over the appeal under 28 U.S.C. 1252 regardless of whether the district court properly asserted jurisdiction in the first instance. See *Williams* v. *Zbaraz*, 448 U.S. 358, 366-368 (1980); *McLucas* v. *DeChamplain*, 421 U.S. 21, 31-32 (1975). But cf. *California* v. *Grace Brethren Church*, 457 U.S. 393, 418-419 (1982). Furthermore, the Court in *NICOA* merely affirmed the district court's judgment summarily. The summary affirmance in that case provides no support for petitioners' jurisdictional argument because, as this Court has repeatedly stated, "although summary dispositions are decisions on the merits, the decisions extend only to " 'the precise issues presented and necessarily decided by those actions.' " *Metromedia, Inc.* v. *City of San Diego*, 453 U.S. 490, 499 (1981) (plurality opinion)

In reaching a similar result here, the court below adopted the analysis of the Third Circuit in *Compensation Department* (see Pet. App. 6a). Under that approach, it is clear that "the BLBA statutory scheme of review is exclusive" (*id.* at 8a). To begin with, Congress implicitly acknowledged that the BLBA review procedure is exclusive by rejecting a proposed section of the BLBA that would have allowed claimants to seek review of benefits determinations in the district courts. See *Compensation Department*, 667 F.2d at 342 (citing H.R. Conf. Rep. 95-864, 95th Cong., lst Sess. 22-23 (1978)). In fact, Congress specifically granted the district courts jurisdiction only in a few narrow circumstances (Pet. App. 8a).[5] Moreover, the Benefits Review Board, which is composed of individuals with pertinent expertise, is particularly qualified to adjudicate the cases before it.

(quoting *Mandel* v. *Bradley*, 432 U.S. 173, 176 (1977)).

Petitioners' reliance (Pet. 15) on *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), is similarly misplaced. As the court of appeals observed (Pet. App. 7a):

> With respect to *Abbott Laboratories*, it is sufficient to note that the decision dealt exclusively with application of the APA and that Congress in enacting the BLBA expressly excluded the provision of the APA. 30 U.S.C. § 956. Moreover, later authority indicates that *Abbott Laboratories* "arguably assumed with little discussion that the APA is an independent grant of subject matter jurisdiction." *Califano* v. *Sanders*, 430 U.S. 90, 105 (1977). *Califano* determined that in fact the APA does not grant jurisdiction.

[5]Specifically, the district courts have jurisdiction to enforce both a compensation order making an award (33 U.S.C. 921(d)) and a lien against an operator who fails to make payments to the Black Lung Disability Trust Fund. 30 U.S.C. (& Supp. V) 934(b)(4)(A). Two courts of appeals have also recognized that the district courts have exclusive jurisdiction under 33 U.S.C. 918 to enforce orders declaring default in the payment of compensation. *Jones & Laughlin Steel Corp.* v. *Wertz*, 720 F.2d 324 (3d Cir. 1983); *Tidelands Marine Service* v. *Patterson*, 719 F.2d 126 (5th Cir. 1983).

"Allowing the BRB to pass initially upon important issues provides for a much greater likelihood of uniformity and effectiveness in the administration of the BLBA than would allowing actions to be brought in the various district courts throughout the country." *Compensation Department*, 667 F.2d at 342. In addition, "in providing for review of BRB determinations in the court of appeals, Congress in effect required * * * that a [party] exhaust all administrative remedies before seeking judicial review. There would have been little point in creating an entity such as the BRB if it could be circumvented at will by the bringing of an action in a district court against the Secretary." *Ibid.* Thus, "the same danger of duplicative and conflicting litigation" that this Court deplored in *Whitney* would be present if parties in a BLBA proceeding were permitted to bring suit in district court. *Compensation Department*, 667 F.2d at 342.[6]

Thus, there is no merit to petitioners' claim (Pet. 15) that the interests of efficiency "clearly justify" district court review. On the contrary, adherence to the statutory review procedure ensures review by a tribunal with far greater cumulative experience about arcane regulatory matters than a district judge and it streamlines the administrative process by removing a layer of judicial review. As the Third

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[6] *Accord, Garland* v. *Director, U.S. Department of Labor*, 713 F.2d 613 (11th Cir. 1983) (affirming district court dismissal of action seeking review of administrative decisions denying benefits under the BLBA for lack of jurisdiction and failure to exhaust administrative remedies); *Appalachian Power Co.* v. *Dunlop*, 399 F. Supp. 972 (S.D. W. Va. 1975) (dismissing employer's suit brought in district court to enjoin Secretary of Labor from finding it an "operator" because employer had failed to exhaust administrative remedies). Other courts, although not confronting directly the exclusivity of the statutory scheme, have noted the broad jurisdictional reach of the Benefits Review Board. See, *e.g.*, *Marshall* v. *Barnes & Tucker Co.*, 432 F. Supp. 935, 937-938 (W.D. Pa. 1977).

Circuit observed in *Compensation Department* (667 F.2d at 342 (footnote omitted)), "if at every point in the administrative process at which a [party] * * * believed that the BLBA was not being followed in some respect, that [party] could file an action in district court for an injuction—rather than raise the alleged violation of the statute on administrative appeal—the resulting duplication of review and the disruption of orderly and uniform administrative interpretation could have an adverse effect on implementation of the BLBA." There is no reason why petitioners could not challenge the Secretary's guideline before the Benefits Review Board in the first appropriate case and then seek direct court of appeals review of any adverse ruling.

To be sure, "exceptional circumstances" may permit a party to bypass an exclusive statutory scheme. *Whitney*, 379 U.S. at 426 n.7; *Compensation Department*, 667 F.2d at 343. These "exceptional circumstances," however, are narrowly construed. "[C]ourts will not make nonstatutory remedies available without a showing of patent violation of agency authority or manifest infringement of substantial rights irremediable by the statutorily-prescribed method of review." *Nader* v. *Volpe*, 466 F.2d 261, 266 (D.C. Cir. 1972) (footnote omitted). See *Renegotiation Board* v. *Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974). The court of appeals in this case correctly noted that petitioners have failed to show any circumstances that would require an exceptional assumption of jurisdiction by the district court: the statute "does not clearly exclude railroads" (Pet. App. 9a), and "the Secretary has considerable discretion in making initial determinations of BLBA applicability" (*id.* at 11a).[7]

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[7]Although, in our view, the Court should not reach the substantive issue in this case, we also note that petitioners' underlying claim is without merit. First, the BLBA's definition of "operator," which includes "any independent contractor performing services or construction at [a] mine," on its face encompasses railroads. 30 U.S.C. (Supp. V)

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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of the BLBA, 30 U.S.C. (Supp. V) 802(d). Moreover, another section ployers other than mine operators, 932(b), explicitly recognizes that en tion of coal, may be liable for the who are engaged in the transporta payment of benefits.

is also sufficiently broad to include

The BLBA's definition of "miner extends coverage to persons who railroad employees; that definition ation. 30 U.S.C (Supp. V) 902(d). have worked in coal mine transpo itions are controlling. Contrary to These unambiguous statutory defi ve history of the BLBA does not petitioners' assertions, the legislat As the court of appeals pointed out support petitioners' interpretation. history cited by petitioners (Pet. (Pet. App. 10a-11a), the legislativn with a Senate bill that was not 20-21) was rendered in conjunctio 4, *supra*, at 15-16. enacted. See H.R. Conf. Rep. 95-8